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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,114	09/21/2001	Kenneth B. Higgins	5113B	5752
7590 Milliken & Company P.O. Box 1927 Spartanburg, SC 29304		02/11/2008		
			EXAMINER	
			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			02/11/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/960,114

**Applicant(s)**

HIGGINS ET AL.

**Examiner**

Cheryl Juska

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 88,90,92-123,125-128 and 131 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 88,90,92-123,125-128 and 131 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 09/07

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendment filed December 31, 2007, has been entered. Claims 101 and 102 have been amended as requested. Claims 1-87, 89, 91, 124, 129, 130, and 132-149 have been cancelled. Thus, the pending claims are 88, 90, 92-123, 125-128, and 131.
2. Said amendment is sufficient to withdraw the 112, 2<sup>nd</sup> rejection of claims 101 and 102 as set forth in sections 3-5 of the last Office Action (Non-Final Rejection, 07/31/07).

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 88, 90, 92-123, 125-128, and 131 stand rejected under 35 USC 103(a) as being unpatentable over US 4,552,857 issued to Higgins in view of US 5,610,207 issued to DeSimone et al. as set forth in section 7 of the last Office Action.

Applicant has not amended the claims in an attempt to overcome the prior art rejection. As such, said rejection is maintained.

5. Claims 88, 90, 92-123, 125-128, and 131 stand rejected under 35 U.S.C. 103(a) as being unpatentable over JP 07-275107 issued to Ito et al. in view of US 4,522,857 issued to Higgins as set forth in section 11, pages 4-8 of the last Office Action.

Applicant has not amended the claims in an attempt to overcome the prior art rejection. As such, said rejection is maintained.

***Response to Arguments***

6. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.
7. With respect to the rejection based upon Higgins '857 and DeSimone, applicant has not presented any new arguments. Rather said arguments are duplicated from the last Amendment (filed 05/14/07), page 9, 1<sup>st</sup> paragraph – page 17, 3<sup>rd</sup> paragraph, which in turn have been repeated from previous responses. Since said arguments have been previously addressed, applicant's attention is directed to sections 8-10 of the Non-Final Rejection mailed 07/31/07, sections 7-9 of the Non-Final Rejection mailed 12/13/06, section 4 of the Final Office Action mailed 05/03/06, sections 5-13 of the Non-Final Office Action mailed 10/07/05, and sections 6 and 7 of the Final Office Action mailed 12/09/04. Therefore, applicant's arguments are found unpersuasive and the rejections over Higgins '857 and DeSimone stand.
8. Regarding the rejection based upon the Ito reference, applicant merely traverses by asserting "that the Ito structure would not perform as a commercially viable carpet tile which could withstand at least 4,000 cycles (Claim 88), much less 12,000 cycles (Claim 92)" since Ito bonds the layers with heat and pressure and not with an adhesive layer or with flame lamination (Amendment, paragraph spanning pages 17-18). This argument is unpersuasive.
9. First, applicant has not provided any evidence that the Ito invention would not have the claimed appearance ratings after 4,000 or 12,000 cycles. "Mere lawyers' arguments unsupported by factual evidence are insufficient to establish unexpected results." *In re Lindner*, 173 USPQ 356. See also *In re Wood*, 199 USPQ 137. Secondly, it is noted that flame lamination is but a specific type of bonding via heat and pressure. Thus, the structural difference between a flame

laminated bond and a bond made by heat and pressure, as described by Ito, is not necessarily clear. Applicant has provided no evidence that flame lamination produces a structurally different product (e.g., declaration showing flame laminated junctions have improved properties over heat and pressure bonded laminates or adhesively bonded laminates).

10. Thirdly, it is noted that the rejection is not based upon Ito itself, but rather in combination with Higgins '857. Specifically, it was asserted that the claimed properties (e.g., appearance rating) would have been obviously present upon modification of the Ito invention with the adhesive bonding teachings of Higgins '857. Like materials cannot have mutually exclusive properties. Therefore, the rejection based upon Ito and Higgins '857 are hereby maintained.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794